

Case Summary

Yolanda Weathers appeals her conviction for murder and ninety-five-year sentence for murder, Class C felony stalking, and being an habitual offender. We affirm.

Issues

Weathers presents multiple issues for our review, which we restate as:

- I. whether the trial court abused its discretion by admitting evidence obtained from a flannel shirt;
- II. whether the trial court abused its discretion by admitting evidence obtained from a pair of shoes;
- III. whether there is sufficient circumstantial evidence to sustain the murder conviction;
- IV. whether the trial court abused its discretion in sentencing her; and
- V. whether the ninety-five-year sentence is appropriate in light of her character and the nature of the offenses.

Facts

The evidence most favorable to the convictions is that in the early morning hours of November 10, 2005, Weathers started a fire at an apartment building in Evansville. Sue Edwards, a seventy-three year old tenant, was unable to escape the building and died in the fire. The official cause of her death was smoke inhalation. Her body was found completely burned in a common area of the building. Weathers was involved in a love triangle between a former boyfriend, Robert Sebree, and his new girlfriend, Lucille Preston, who lived in that apartment building.

On October 8, 2005, police had been called to the apartment for a domestic incident involving Weathers, Sebree, and Preston. Weathers had been banging on Preston's front door at 2:45 a.m. She returned later that morning and threw a fire extinguisher through Preston's window. While police were on the scene, Weathers called Preston. The responding officer answered and heard, "Bitch, bitch, bitch, this is just the start of things." Appellant's App. Vol. IV. p. 14.¹ On October 10, 2005, police were again called to the apartment. Weathers had broken windows in Preston's apartment and the windshield and passenger side windows of Preston's car.

The next day Preston, reported to police that Weathers had called her continuously: at least twenty-five times on October 9, twenty times on the 10th, and ten times on the 11th. She said things in the calls like "Bitch," "Ho," "I will kill you," and "this is not over, it has just begun." Id. During the month of October, neighbor Jeff McLaughlin witnessed Weathers trying to throw his patio furniture through Preston's windows. Sebree filed for a protective order against Weathers on October 11, 2005, and Preston filed for one on October 12, 2005. Due to problems with obtaining proper service on Weathers, a hearing on the matter was postponed until December 5, 2005. Both protective orders were granted at that time.

Preston had received threatening phone calls from Weathers during the early morning hours on the day of the fire. The phone calls came to Sebree's cell phone at 4:41 a.m., 5:30 a.m., 5:35 a.m., and 5:36 a.m. When Preston answered, Weathers said,

¹ Volume IV is not paginated or tabbed.

“Bitch, I’m going to get you” and “Bitch, you can’t have him, I’m going to kill his ass.” Id. at 4. Preston told Weathers that Sebree was her man and she was not letting him go. Weathers replied, “Bitch, when you get home, I’m going to have something for you.” Tr. p. 75. Preston left for work at 5:15, and Sebree left between 6:15 and 6:30 that morning. Both of them were at work when they received news of the fire. After the fire, Weathers continued her phone harassment of Preston, telling her during one call that she was “going to burn you[r] daughter up and your grandkids.” Tr. p. 77.

When fire survivor, Jeff McLaughlin, left his second floor apartment the hallway was full of smoke. The fire was on the threshold of Preston’s door and the exit door and the fire “looked like there was a pattern” and it was “like a Z.” Tr. pp. 242-43. He had to force the exit door open and was burned on his head, arms, and neck during his escape. He saw Sue Edwards trying to get out, but she could not get the exit door opened. He tried helping her, but he could not get the door open either, and burned his hands.

Weathers arrived at her babysitting job between 7:30 and 8:00 on the morning of the fire. She babysat Erica Robinson’s children at their home just a mile and a half from the scene of the fire. Police officers arrived at Robinson’s apartment before 8:30 that morning looking for Weathers. Weathers instructed Robinson not to let them in because she had an outstanding warrant. Robinson told police that Weathers was not there, while she was actually just hiding in another room. Weathers’s two daughters, Demitia and Deimeka Jones, arrived at Robinson’s apartment shortly after the police officers left. They took their mother to the police station. Weathers ingested a number of prescription pills on the way to the station, telling her daughters “I’m going to kill myself, I don’t

want to be accused of something I didn't do." Tr. p. 654. Demetia dropped Weathers off, watched her walk in to the station, and drove away.

Later that day, Detectives Dan Winters and Kenneth Taylor contacted the daughters and asked them to come to the station. One of the daughters told Detective Taylor that their mother took multiple pills and may have been attempting suicide. The detectives determined they needed to find out what types of pills Weathers ingested. The owner of the car, Demetia, gave Detective Taylor her car keys and the other daughter, Deimeka, walked out to the car with him. Deimeka pointed out Weathers's purse and bag of clothing and told him to take it. The contents of Weathers's purse were dumped onto a table inside the station and revealed the cell phones. The daughters gave Detective Winters their mother's cell phones, the contents of the purse were put back, and it was given to the daughters. Detective Winters locked the bag of clothing in his desk drawer. Detectives kept the pill bottles as well.

Richard Clayton Howard, a fire investigator with the Evansville Fire Department, advised detectives on the day of the fire that any items of clothing found with a suspect would need to be put into sealed metal cans to prevent potential chemical evidence from evaporating. The day after the fire Howard ran a trained dog by the desks in the station and it alerted at the drawer where Weathers's clothing was stored. Detectives opened the bag and spread out the items of clothing. The dog alerted at a flannel shirt. Detectives then put each of the items of clothing into sealed metal cans. Howard asked the detectives if they had Weathers's shoes or other items of her clothing. Detectives told

Howard that Weathers's shoes were at the jail. He advised that they be preserved and went with detectives to get the shoes and place them in the appropriate metal containers.

Detectives obtained a search warrant on November 15, 2005, to further investigate Weathers's personal items. The right shoe tested positive for a medium petroleum distillate ("MPD"), which is a classification of ignitable liquids including things like lighter fluid, mineral spirits, and paint thinner. MPD was also found on the flannel shirt. During trial Howard testified that he ruled out any accidental or electrical causes of the fire. Edward Knust, a fire investigator with an engineering firm, also determined that the fire was not started by accidental or natural sources. Knust concluded that the origin of the fire was in the common area, near the entrance on the ground level. Howard reached the same conclusion.

On December 13, 2005, the State charged Weathers with two counts of Class D felony stalking. The State charged Weathers with murder and two counts of Class A felony arson on February 22, 2006. The cases were consolidated for trial. Weathers filed a motion to suppress, objecting to the admissibility of the cell phones inside her purse, her clothing, and her shoes. The trial court held a suppression hearing on November 6 and 22, 2006. The trial court granted Weathers's motion as to the cell phones, but denied the motion as to the bag of the clothing and the pair of shoes.

The jury found Weathers guilty on all counts and found that she was an habitual offender. The trial court sentenced her to sixty-five years for the murder and eight years for the stalking, to be served concurrently. The trial court enhanced the sentence by thirty years for the habitual offender finding. This appeal followed.

Analysis

I. Admission of Flannel Shirt

Weathers contends she had a legitimate expectation of privacy in the bag of clothing that she left in her daughter's car. She argues that the police conducted an illegal warrantless search of the bag. The piece of evidence at issue inside the bag was the flannel shirt, which tested positive for accelerant. The State asserts that the evidence was properly seized because Weathers's daughter consented to detectives entering the daughter's car and taking it. After the canine alerted at the bag, and specifically the shirt, officers obtained a warrant to have the flannel shirt chemically tested.

Generally, the trial court has inherent discretionary power on the admission of evidence, and its decisions are reviewed only for an abuse of that discretion. Jones v. State, 780 N.E.2d 373, 376 (Ind. 2002). We again emphasize that pre-trial rulings on admissibility do not determine the ultimate admissibility of the evidence. Hightower v. State, 866 N.E.2d 356, 364 (Ind. Ct. App. 2007), trans. denied. Accordingly, a trial court's denial of a motion to suppress does not constitute an appealable issue. Id. Only after the evidence is admitted at trial over a specific objection can a party assert an error on appeal. Id. Thus, the question on appeal is two-fold: (1) did Weathers specifically object so as to preserve the issue on appeal, and (2) if so, did the trial court err in admitting certain evidence. See id. Weathers properly preserved the issue by objecting at trial.

Where a pretrial suppression hearing was held, courts may reflect upon the foundational evidence from that hearing if it is not in direct conflict with the evidence

introduced at trial. Kelley v. State, 825 N.E.2d 420, 426 (Ind. Ct. App. 2005). Additionally, we should consider evidence from the motion to suppress hearing that is favorable to the defendant and has not been countered or contradicted by foundational evidence offered at the trial. Id. at 426.

Weathers contends that the detectives' search of the bag of clothes is tantamount to an illegal search of secure personal luggage. First, it must be noted that Weather's bag of clothing was neither secure nor even a closed container. Detective Winters testified that the clothing was in an open brown paper bag. The bag was neither closed, nor locked, and the flannel shirt was visible to the officers. The condition of this container makes it less like a purse² or locked briefcase, items in which the owners have a legitimate expectation of privacy. See Krise v. State, 746 N.E.2d 957, 964 (Ind. 2001) ("A locked briefcase is comparable to a purse in that both are closed containers that often hold personal items."); State v. Lucas, 859 N.E.2d 1244, 1251 (Ind. Ct. App. 2007) (holding that officers performing a vehicle inventory search should have waited for a valid warrant before opening a locked metal box), trans. denied; State v. Friedel, 714 N.E.2d 1231, 1236 (Ind. Ct. App. 1999) (holding that a driver's consent to search a vehicle does not extend to the search inside a passenger's purse).

Weathers left her bag of clothing in a place where she never had an expectation of privacy—her daughter's car. Weathers did not make arrangements for this property to be delivered or secured in another fashion, nor did she request her daughter to make a stop at

² We note that the trial court granted the motion to suppress as to the contents of the purse.

her own residence to store the property. She got out of the car at the police station and left her belongings behind.

In addition, Weathers's daughter consented to a search of the car. She gave police the keys to the car and access to Weathers's belongings. The scope of a consent search is measured by objective reasonableness. Krise, 746 N.E.2d at 964. Demetia had authority to consent to the search of her own car. See id., 746 N.E.2d at 964 (reasoning that where a third party gives consent, that individual's authority, actual or apparent, must be established). "[W]hen a driver gives consent to search a car, searching an item that turns out to belong to a passenger may be upheld when the officer's actions in searching the item were objectively reasonable." Polk v. State, 822 N.E.2d 239, 246 (Ind. Ct. App. 2005), trans. denied. We conclude that it was reasonable for the detectives to conclude they had authority to seize the open bag of clothing. The owner of the car had turned over her keys and Weathers's other daughter told Detective Winters to take the items.³ Because Weathers left the bag in her daughter's car and her daughters consented to the search of the car, Weathers's rights under the federal and Indiana constitutions were not violated. The trial court did not abuse its discretion in admitting the flannel shirt and the forensic evidence related to it.

³ Although Deimeka Jones testified that she never expressly told detectives to take the bag of clothing, the trial court was in the best position to assess the credibility of witnesses and we will not reweigh evidence and testimony.

II. Admission of the Pair of Shoes

Weathers contends the police illegally seized and searched her inmate property bag. The piece of evidence at issue in this bag was the right shoe Weathers was wearing when she was taken into custody that tested positive for accelerant. Specifically, Weathers claims she should have been advised of her Pirtle rights before her personal property was searched.⁴

The State counters that Pirtle is inapplicable here, and we agree. Our Supreme Court held in Pirtle v. State, 263 Ind. 16, 29, 323 N.E.2d 634, 640 (1975), that a person who is asked to consent to a search while in police custody is entitled to the presence and advice of counsel before deciding whether to consent. Because Pirtle was not afforded counsel after he requested it, he “could have no conception of the extent of his Fourth Amendment rights.” Id. at 640. This is not a situation where Weathers was taken into custody and police needed to obtain consent to search her car or residence, like the defendant in Pirtle. Weathers did not consent to the search of her inmate property bag—she did not need to, as she had no privacy interests in the bag once she was taken into custody, and the analogy to the Pirtle’s situation is flawed.

Regarding the seizure of Weathers’s shoes, the States urges us to adopt the reasoning of the Washington Supreme Court in State v. Cheatham, 81 P.3d 830 (Wash.

⁴ Weathers contends in her reply brief that the pair of shoes was the fruit of the poisonous tree because police only seized it based on the dog’s alert to the flannel shirt. This argument is misplaced because the seizure of Weathers’s shoes is not derivative of the fire investigator’s finding on the shirt. Early in the investigation he requested special care of the items any suspect was wearing when arrested. In any event, this argument is waived because appellants are not permitted to present new arguments in their reply briefs. See Hepburn v. Tri-County Bank, 842 N.E.2d 378, 380 n.1 (Ind. Ct. App. 2006), trans. denied.

2003). The court there held that an inmate does not have a privacy interest in his or her shoes and other personal items once they have been properly inventoried following a booking. Cheatam, 81 P.3d at 834. “[O]nce an inmate’s personal effects have been exposed to police view in a lawful inventory search and stored in the continuous custody of the police, the inmate no longer has a legitimate expectation of privacy in the items free of further governmental intrusion.” Id. at 836. The Washington Supreme Court relied on United States v. Edwards, 415 U.S. 800, 805, 94 S. Ct. 1234, 1238 (1974). In Edwards, the Supreme Court held that the warrantless seizure of defendant’s clothing following his arrest was not improper.

[O]nce the accused is lawfully arrested and is in custody, the effects in his possession at the place of detention that were subject to search at the time and place of his arrest may lawfully be searched and seized without a warrant even though a substantial period of time has elapsed between the arrest and subsequent administrative processing, on the one hand, and the taking of the property for use as evidence, on the other. This is true where the clothing or effects are immediately seized upon arrival at the jail, held under the defendant’s name in the ‘property room’ of the jail, and at a later time searched and taken for use at the subsequent criminal trial.

Id. at 807, 94 S. Ct. at 1239. The Supreme Court went on to say that “this was and is a normal incident of custodial arrest” Id. at 805, 94 S. Ct. at 1238.

Generally, Indiana courts have held that inmates have a reduced expectation of privacy. Lemond v. State, 878 N.E.2d 384, 392 (Ind. Ct. App. 2007), trans. denied. Specifically, inmates do not have a reasonable expectation of privacy in their cells. See Perkins v. State, 483 N.E.2d 1379, 1384 (Ind. 1985) (finding that a prison inmate does

not have a right to privacy in his cell); Cleary v. State, 663 N.E.2d 779, 783 (Ind. Ct. App. 1996) (specifically finding that a jail inmate does not have a right to privacy in his jail cell). Prisoners also typically have no expectations of privacy in their mail. Grooms v. State, 269 Ind. 212, 220, 379 N.E.2d 458, 463 (Ind. 1978); Rennert v. State, 263 Ind. 274, 277, 329 N.E.2d 595, 598 (Ind. 1975) (stating that there is a legitimate state interest in searching a prisoner's mail for contraband and prisoner has no expectation of privacy when he knows officials read his mail).

Weathers's personal effects were seized and stored when she was booked in the jail. These items were no longer in her possession or control and for all practical purposes Weathers lost any privacy interests in them at that time. The fire investigator advised detectives that her shoes would need to be properly stored in metal containers to prevent the evaporation of any chemical evidence. Officers acted reasonably to gather the shoes and store them to preserve evidence. We conclude the reasoning of the Washington Supreme Court in State v. Cheatam is persuasive and adopt it in this instance. The seizing of Weathers's shoes from the inmate inventory did not violate her federal or state constitutional rights. The trial court did not abuse its discretion by admitting evidence obtained from the pair of shoes.

III. Sufficiency of the Evidence

Weathers contends there is insufficient evidence to support her murder conviction. Our standard of review for sufficiency of the evidence claims is well settled. When reviewing the sufficiency of the evidence supporting a conviction, we will not reweigh the evidence or judge the credibility of witnesses. Staton v. State, 853 N.E.2d 470, 474

(Ind. 2006). We must look to the evidence most favorable to the conviction together with all reasonable inferences to be drawn from that evidence. Id. We will affirm a conviction if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Id.

Weathers contends physical evidence linking her to the fire is necessary, but Indiana courts have not created such a requirement. “A verdict may be sustained based on circumstantial evidence alone if that circumstantial evidence supports a reasonable inference of guilt.” Lacey v. State, 755 N.E.2d 576, 578 (Ind. 2001). In any event, we find the testimony and evidence presented at trial does link Weathers to the scene of the fire and is sufficient to support her convictions. She had vandalized the building in the past. In early November, while parked near the building with a friend, Weathers had asked the friend for a gas can and said she “was going to burn them out.” Tr. p. 790. She had harassed two occupants just hours before the fire, concluding her phone calls with threats of continued and immediate violence. She was hiding from police on the morning of the fire at a home just a mile and a half away. On the way to the police station, Weathers attempted suicide. The fire experts testified that the fire was not accidental or electrical and it started in the common area of the building. Most importantly, one of her shoes and her flannel shirt tested positive for accelerants. We conclude that sufficient evidence existed to support Weathers’s conviction for murder.

IV. Abuse of Discretion in Sentencing

Weathers contends the trial court abused its discretion in sentencing her to ninety-five years. Specifically, she argues that the trial court made improper considerations while determining the aggravating and mitigating factors. We engage in a four-step process when evaluating a sentence under the current “advisory” sentencing scheme. See Anglemeyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). First, a trial court must issue a sentencing statement that includes “reasonably detailed reasons or circumstances for imposing a particular sentence.” Id. Second, the reasons or omission of reasons given for choosing a sentence are reviewable on appeal for an abuse of discretion. Id. Third, the weight given to those reasons, i.e. to particular aggravators or mitigators, is not subject to appellate review. Id. Fourth, the merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). Id.

The trial court issued an oral sentencing statement during the hearing. The trial court found Weathers’s mental condition to be a slight mitigator. Weathers’s mental history included personality disorders and possible bipolar with paranoid and antisocial disorders. The trial court reviewed her mental history and reports of three physicians.⁵ The aggravator was Weathers’s criminal history. The trial court listed her previous convictions and the nature of the past offenses including felony convictions for battery, battery by bodily waste, and theft, and misdemeanor convictions for public intoxication,

⁵ The transcript indicates these mental history reports were incorporated into the pre-sentence investigation report (“PSI”). Weathers did not include the PSI or the reports in her appendix. The State included the PSI, but did not attach the mental health reports or the letters from the victim’s family, which were also indicated to have been incorporated into the PSI.

operating a vehicle while intoxicated, false reporting, battery, false informing, and disorderly conduct. The trial court found that the aggravator “greatly outweigh[ed]” the mitigator. Tr. p. 1361. Weathers cites the following passage from the sentencing hearing as purported evidence of the trial court’s abuse of discretion.

The Court finds that the aggravating circumstances greatly outweigh the mitigating circumstances, and with all due respect I disagree with you, Ms. Wilburn in that I don’t think she is a good person. I think she’s mean, I think she’s a person that . . . that can’t live in our society peacefully.

Tr. pp. 1360-61 (ellipses in original).

Weathers seems to contend that the trial court’s characterization of her as “mean” constitutes an improper reason for choosing the sentence and an abuse of discretion. First, we note that this characterization was announced after the trial court issued its opinion that the aggravator outweighed the mitigator. We also note that the comment is a direct response to the previous testimony of one of Weathers’s character witnesses, and not a reason for the sentence. The trial court’s comment that Weathers is “mean” does not constitute a reviewable reason for the sentence or an abuse of discretion. We conclude that the trial court did not abuse its discretion in sentencing Weathers.

V. Appropriateness of Sentence

Having concluded the trial court acted within its discretion in sentencing her, we now assess whether Weathers’s ninety-five-year sentence is inappropriate under Indiana Appellate Rule 7(B) in light of her character and the nature of the offenses. See Anglemeyer, 868 N.E.2d at 491. Although Rule 7(B) does not require us to be “extremely” deferential to a trial court’s sentencing decision, we still must give due

consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. “Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate.” Id.

Weathers contends that because she knew Preston was not home at the time of the fire, “there is no evidence whatsoever in the record that [she] intended to harm anyone.” Appellant’s Br. p. 17. Such a contention is without merit. Weathers started a deadly fire in the common area that blocked the exit of a multi-unit apartment building. This action showed a clear disregard for the safety and lives of others. The victim, a seventy-three year old woman, died while trying to escape. Neighbor Jeff McLaughlin witnessed the woman’s failed escape attempt and testified that he could see her clothing catch fire and hear her cries for help. The crime was heinous. We find nothing in Weathers character to merit a reduction to the sentence. This crime was the culmination of repeated disruption, harassment, and violence that Weathers inflicted on Preston and Sebree. Her criminal record reflects a lifetime of violence and disregard for the law. We conclude that the ninety-five-year sentence is not inappropriate in light of the nature of the crime and Weathers’s character.

Conclusion

The trial court did not abuse its discretion by admitting the flannel shirt and pair of shoes. Sufficient evidence existed to sustain the convictions. The trial court did not abuse its discretion in sentencing Weathers and the sentence is appropriate in light of the nature of the offenses and her character. We affirm.

Affirmed.

SHARPNACK, J., and VAIDIK, J., concur.